



U.S. Department
of Transportation
**Federal Highway
Administration**

CQ658

400 Seventh St., S.W.
Washington, D.C. 20590

OCT 1 2002

Refer to: HEPE

NEPA Task Force
P.O. Box 22150
Salt Lake City, UT 84122

Dear Sir/Madam:

The Federal Highway Administration (FHWA) is pleased to respond to the Council on Environmental Quality's Federal Register notice requesting information to assist the National Environmental Policy Act (NEPA) Task Force in its effort to identify opportunities to improve the Federal government's implementation of NEPA. As you are aware, in cooperation with the Federal Transit Administration and Federal resource and permitting agencies, FHWA has been engaged in a similar effort to identify and implement more effective environmental review procedures for surface transportation projects. We intend to fully utilize the results of the CEQ NEPA Task Force and of our ongoing efforts to inform the work of a new interagency task force established by President Bush in the new Executive Order titled, Environmental Stewardship and Transportation Infrastructure Project Reviews, signed on September 18, 2002.

We commend the CEQ for taking on this effort. While NEPA has been an extremely effective statute for protecting the environment, there can be no doubt that improvements in its implementation are possible and needed. In particular, we believe that additional focus on the good government principles, laid out in the first section of the CEQ NEPA regulations, is needed. We hope that CEQ can use the products of this task force to reinforce among all Federal agencies the necessity of using the NEPA process as a forum for coordinating compliance and decisionmaking activities relating to the many special purpose environmental statutes and other program authorities vested in the individual agencies. This enhanced integration of decisionmaking should lead to better decisions, ones that are better for the environment and ones that meet the specific mission requirements of the various agencies, and to decisions that are made in a more timely manner. Our experience in the 25 years since CEQ issued its NEPA regulations is that too many staff in too many agencies continue to view NEPA in very narrow terms – a single action agency preparing a document to comply with a single law. We urge CEQ to take aggressive measures to reinforce the broader vision of NEPA so articulately communicated in your NEPA regulations.

Since FHWA administers a program that relies primarily on the efforts of State departments of transportation, we are very mindful of federalism issues in the administration of our program. We are not alone among Federal agencies in achieving our program objectives through partnerships with States, local governments, tribes, and private entities. With this in mind, we highly recommend that task force focus some of its efforts on products that explicitly reflect the reality that all decisionmaking is not vested in Federal agencies. We suggest that the task force



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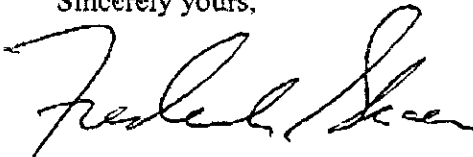
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identify opportunities to better integrate the Federal decisionmaking process with State, local, tribal, and private decisionmaking. We find that lack of clarity in this area imposes an unreasonably heavy burden on the NEPA process and invites a wide variety of responses from the courts. In our program, this is most manifested in the assessment of indirect and cumulative effects largely resulting from local land use decisions and in debates concerning responsibility for mitigating the adverse environmental consequences of these effects. We are sure that other Federal agencies face similar challenges. To assist the task force in addressing these federalism issues, we recommend that you refer to the En Libra effort being advanced by the Western Governors Association.

Attached are FHWA's detailed feedback on the six areas listed in the Federal Register notice and a number of best practice examples.

We appreciate the opportunity to comment on this important effort. FHWA has identified environmental stewardship and environmental streamlining as one of three top priorities for the agency in the coming years; the work of the NEPA task force is critically important to achieving our environmental objectives. We look forward to continuing collaboration with the task force members and CEQ staff. As discussed with CEQ Associate Director Horst Greczmiel, we are available to participate in peer reviews or in other ways that might assist the task force.

Sincerely yours,



Frederick Skaer, Director
Office of NEPA Facilitation

Enclosure

cc: Horst Greczmiel

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FHWA Detailed Responses to NEPA Task Force Topics

A. Technology, Information Management and Information Security

Background materials acquired for scoping and subsequent analysis of highway projects is varied and may come from many different sources, depending on the nature and origin of the specific proposal. Local agency planning studies, if available, are very important resources. Previous EISs, EAs, and related technical reports prepared for resources in the same geographical area are also useful but perhaps an underutilized and untapped source of data. There are many online sources and services that can be used to identify a number of potential data sources quickly.

Data is also available from public and private organizations including Federal, State, Regional, and local governmental agencies; libraries, universities, professional associations; and Metropolitan Planning Organizations. Various units within NASA, NOAA, USGS, FWS, USDA, DOE, DOT, and DOD offer extensive data on natural resources for downloading over the Internet. The Bureau of Census data catalog, HUD's E-maps, and, state, local, and regional planning commissions are often good resources. There are a number of GIS Data clearinghouses currently in service and being developed.

Some barriers related to information technology may include the lack of equipment, lack of centralized archives, lack of trained personnel, lack of knowledge of the available resources, and lack of knowledge of technology. Also, contracting mechanisms and specifications may be biased toward duplication of data rather than updating previous, public domain, work products, possibly due to the contractor's ability to charge for their work. In addition, few protocols exist for archiving data and analyses compiled as part of NEPA studies for later use by either the sponsoring agency or other parties.

Compatibility, accessibility, connectivity, portability of appropriate data, poor indexing, lack of adequate metadata, limited mass storage, lack of rapid retrieval capabilities, and lack of rapid computational abilities with super-large files can be major barriers to efficient transfer of archived data from the existing archival systems to the local information systems of the intended user.

A wise investment might be a coordinated statewide or regional effort to archive useful citations and reports, create a series of tabulated data layers in a GIS "data clearing house", or maintain an online national, regional, or statewide almanacs. A national initiative for a GIS and remote sensing archive may be the best, integrated effort that we could put forward to streamline and assure the quality of data and full coverage of sensitive issues in NEPA analysis. A recent study by Arkansas Department of Transportation validates the substantial savings that can result from a GIS based approach to NEPA analyses. CEQ could provide a forum for better information sharing across agencies which might include a national effort to draw together, standardize,

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validate, cross-reference, and archive the data and analytical results already being collected and prepared by multiple units of multiple agencies with the express purpose of standardizing and streamlining, nationally, much of the NEPA analytical process.

FHWA does maintains a vast amount of environmental and transportation oriented information, generally documentation, rather than data. (FHWA, Office of Planning and Environment-- <http://www.fhwa.dot.gov/hep/index.htm> , FHWA, Office of NEPA Facilitation, RE: NEPA Community of Practice-- <http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/home> , Bureau of Transportation Statistics--National Transportation Atlas Database-- <http://websas.bts.gov/website/ntad/maindownload.html> , and, FHWA and USGS--National Highway Runoff Water Quality and Methodology Synthesis-- <http://ma.water.usgs.gov/FHWA/runwater.htm>). Other available sources of information are maintained relevant only to specific projects in project archives distributed across the FHWA field offices and are not generally, easily accessible. Gathering links to these data sources and/or archiving them would be a very large undertaking; nevertheless, data compiled for EISs is increasingly becoming publicly available in a variety of formats via the world wide web.

Information to be transmitted must be offered to the public and to cooperating agencies in a format they are prepared to utilize. Ideally, information, databases, document files, etc. should be posted to a program or project web page but we continue to offer most information on CD-ROM or in hard copy to accommodate a majority of users.

Information management technologies must be combined with traditional public involvement and community impact assessment techniques for optimal efficiency and effectiveness in communicating with stakeholders. Deployment of new technologies alone will not result in effective communications with all stakeholders. A blended effort involving new techniques along with "tried and true" public involvement methods is the most promising plan for efficient, effective communications. Electronic communications may never equal the effectiveness of person-to-person physical contacts to convey and receive information and to build respect and confidence. We recognize that the use of certain communication technologies has the potential to exclude certain elements of the public. For example, persons with little or no experience or training in using information technologies; persons suffering visual, aural, or other disabilities; and those who may not be able to afford routine access to Internet or other information systems technologies. On the other hand, some information technology, such as visualization technology, has the potential to communicate information without reliance on technical jargon that most citizens find difficult to understand.

It is certain that specific, relevant data layers from a comprehensive Environmental GIS and websites must be secured against potential misuse. Security systems and access control protocols must be established to prevent or maintain limits on access by those with malicious intent while assuring that those with legitimate need are able to gain access with minimal delay.

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Other factors to be considered in balancing public involvement and information security include: the need to respect tribal concerns, the location of threatened and endangered species, and the location of archaeological sites.

Two of the leading examples of how FHWA is supporting the use of emerging information technology to enhance the NEPA process are the Florida DOT Efficient Transportation Decision Making (ETDM) process and the Re:NEPA community of practice. Florida DOT's ETDM process marries data and analyses available through a very rich GIS library with customized email for expediting and tracking the history of interagency coordination from early planning studies through the life of the project. Re:NEPA is a web based community of practice which provides NEPA practitioners with a very user friendly forum for seeking advice from peers across the world, for sharing their experience, and for keeping up with recent policy and technical changes, including works in progress.

B. Federal and Inter-governmental Collaboration

The benefits of early, frequent coordination and collaboration during early project planning and project development cannot be overstated. Collaborative processes and coordinated decisionmaking will avoid unnecessary procedural delay and offer predictable results. Indeed, this area has been the focus of FHWA activities in implementing the environmental streamlining provision of the Transportation Equity Act for the 21st Century. Guided by an eight agency national memorandum of understanding, the environmental streamlining efforts have focused on building and implementing a national interagency agenda to improve both the quality and timeliness of the environmental review process. These efforts are occurring at the program level in rethinking policies and procedures and also one project at a time in better executing the essentials of effective interagency coordination.

We have found certain qualities or attributes to be present in effective intergovernmental collaboration. In general, the interagency collaboration process should be:

- Subject to an agreed charter or statement of purpose and principles, that includes:
 - recognition of the common goals of stewardship and public responsibility.
 - commitment to the necessity of early, frequent, open collaboration to build trust, respect, confidence, and commonality among the stakeholders.
 - acknowledgement of potentially differing purposes, goals and objectives of the various stakeholders,
- Inculcated throughout with an over-riding priority for, explicit recognition of, and mutual commitment to the efficiencies and synergistic benefits of early, frequent collaboration,
- Led by an mutually-agreed a process for group validation, management, prioritization, and disposition of all comments, concerns, issues raised by stakeholders

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- Subject to explicit time limits for completion of processes,
- Populated by members who are fully authorized and empowered to make decisions and negotiate outcomes with each other, in a binding manner,
- Inclusive of all stakeholders, each with an opportunity to voice opinions and raise issues, and elevate disputes for resolution,
- Open to creative solutions,
- Committed to a process and procedure for dispute resolution in a binding manner, where not limited by relevant, applicable laws,
- Respectful of the different legal authorities of the different agencies and levels of government, and
- Committed to evaluating and improving upon the performance of the collaborative effort in meeting multiple objectives.

Some of the stated reasons we have encountered for lack of enthusiasm for any collaborative processes include:

- History of poor relations with stakeholders with entrenched or non-negotiable positions
- Lack of recognition of divergent viewpoints by potential collaborative participants
- Institutional inertia—lack of support for any process other than the status quo
- Lack of personnel for frequent, often lengthy meetings
- Lack of internal agency support and funding for innovative processes
- Lack of authorization to use alternative consensus-building methods and/or dispute resolution methods
- Lack of authorization to negotiate mutually agreeable solutions within the collaborative body without reference to external review, especially in multi-program agencies;
- Agency policies and attitudes toward any entity that proposes impacts on protected resources under the Agency's legal authorities
- Automatic or reactionary defensiveness when challenged by other Agencies priorities
- Over commitment to a one-issue view of duty

While NEPA and environmental training should be the core of any Federal agencies professional development curriculum, other personal and professional training must also be utilized to improve collaboration. The following areas deserve emphasis in future training: communication skills, facilitation, problem solving, team building, project management, and other similar educational opportunities.

FHWA's environmental streamlining (www.fhwa.dot.gov/environment/streaming/index.htm) and Re:NEPA community of practice (<http://nepa.fhwa.dot.gov>) web sites contain numerous examples of effective interagency collaboration at the project and programmatic level. Of note is the partnership that FHWA has formed with the Institute for Environmental Conflict Resolution to address issues of conflict management and dispute resolution.

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C. Programmatic Analysis and Teiring

While teired or programmatic NEPA approaches have not been widely used for transportation decisionmaking and the process or approach has been thought of as best suited to other than highway projects or other agency activities, there has been a recent trend to examining large scale and regional projects using a teired NEPA framework. Regional to site-specific scenarios are most effective for programmatic reviews when the right players are involved at the right stages. An enhanced scoping process is extremely critical to success and it is essential that the lead agency, cooperating agencies, and stakeholders understand and agree on the appropriate depth of analyses at various stages, the decisionmaking framework, the intended outcomes at major milestones, the timing of certain activities, and the regulatory requirements respective to tier 1 and tier 2 decisions.

The benefits of a programmatic or tiered approach to project decisionmaking include: the integration and alignment of transportation planning activities and NEPA, the ability to address multiple projects in a systems context, the examination of similar actions in the same geographic area over a longer period of time, an opportunity to streamline the NEPA process for multiple activities within a region or corridor, addressing larger facilities more realistically from a process point of view, and increasing our understanding of the cumulative effects of transportation in a given geographical area.

Information on recent tiered or programmatic projects can be found at the following websites:

- <http://www.i70study.org/>
- http://www.i70mtncorridor.com/N_marchp1.htm
- <http://www.i69indyevn.org/>
- <http://www.wsdot.wa.gov/projects/I-405/>

FHWA emphasizes and encourages the use of programmatic approaches and agreements for carrying out and satisfying specific requirements essential to NEPA decisionmaking (Section 106, Section 404 Permits, Section 7 consultation, etc). These programmatic agreements avoid duplication of review, avoid unnecessary delay, and provide better protection of the environment. Many of these agreements are available from our Environmental streamlining website (<http://www.fhwa.dot.gov/environment/strmlng/index.htm>)

D. Adaptive Management/Monitoring and Evaluation Plans

The following factors are a few of the variables important in adaptive management considerations: cost vs. benefits, environmental stewardship vs. unreasonable expenditure of public funds, time and timing to implement, and probable outcome or success.

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Monitoring is a component of adaptive management. This includes monitoring of our transportation decisions, mitigation measures, and effects on the environment. Commitment compliance is a particular area of NEPA that FHWA takes very seriously. Requirements for monitoring transportation decisions and the implementation of commitments associated with our decisions is explicitly addressed in our NEPA regulation and is a responsibility of the Applicant and Administration offices involved in the approval of transportation projects.

Environmental commitment compliance is one of the programmatic responsibilities we are currently focusing on at a National level via a "domestic scan" which is intended to obtain, highlight, and share with others the existing best practices and success stories related to environmental commitment compliance during NEPA and post-NEPA phases of project development. The scan is focused on obtaining the successful processes, methodologies, and lessons learned concerning the implementation of environmental commitments and mitigation measures agreed upon or stipulated by other Federal or state agencies during the NEPA process and implemented during design and construction. The best practices observed from the scan will be presented in a report for wide distribution.

E. Categorical exclusions

The FHWA approach to categorical exclusions may not be fully appreciated or understood by CEQ or other agencies. CEQ should examine the way in which we have successfully used the CE option to narrow the gap between the EIS and the traditional CE processes for projects where it can individually be demonstrated that the action does not result in significant impacts to the human environment. The CEQ could endorse the FHWA approach and make it available for other agencies to use.

A mechanism should be considered to allow agencies to adopt categorical exclusions easily. The current practice makes it extremely difficult for an agency to add to their existing CE lists in a timely manner. CEQ should consider explicitly endorsing extending the lead/cooperating agency concept to allow an agency to rely on another agency's categorical exclusion determination.

F. Improvements and modernizations needed for NEPA

An improvement to the overall implementation of NEPA could be realized from the revision and updating of the existing CEQ regulations or guidance. A total rewrite of the regulation is not warranted, but a clarification of some the vagaries and inconsistencies would go along way in improving NEPA practices.

The effort should focus on the following issues:

- EIS document format flexibility. There is a need to focus on the real purpose of the NEPA and to move us away from the "everything including the kitchen sink - full disclosure mentality".

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- Validation of the EA/FONSI as a mechanism to address project proposals and satisfy the NEPA process. The EA should be treated as much more than a determination of whether or not an EIS must be prepared; CEQ should recognize its usefulness in addressing other legal responsibilities as well. This change would go along way to close the gap that exists between the EIS and the categorical exclusion determination.
- Mitigated FONSI should be accorded greater legitimacy as a valid element of the NEPA process.
- We need a realistic approach to indirect and cumulative impacts analysis, consideration, and documentation within the framework of the CE, EA, and EIS processes respectively. Current provisions create unrealistic expectations for analysis at the project level. One way that CEQ might approach this is to more actively promote interagency collaboration on a combined cumulative effects evaluation upon which all agencies could rely for their individual actions in a given geographic area.
- We need to address the current limitations of the formal Federal Register NOI and document filing requirements with respect to interagency coordination and public involvement. These practices are nothing more than a formality and add little to the process.
- Address a more appropriate and useful CE process utilizing the FHWA approach.

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From: F. Skær

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COMMENTS:

Hard Copy of letter will also
be mailed to you today.